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September 7, 2006

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 16, 2006

Case Number: TSO-0309

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

**I. Background**

The individual requires a DOE security clearance to perform his duties for a DOE contractor. In August 2004, the police arrested the individual and charged him with "Driving While Under the Influence of Intoxicating Liquor" (DWI) and Careless Driving. After the individual reported his arrest to the DOE, the DOE conducted a Personnel Security Interview with the individual in October 2004 to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for an agency-sponsored mental evaluation. The DOE consultant-psychiatrist examined the individual in March 2005, and memorialized his findings in a report (Psychiatric Report or Exhibit 15). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol abuse.

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In August 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections j and l (Criteria J and L respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual, through his attorney, exercised his right under the Part 710 regulations and requested an administrative review hearing. On November 16, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case in accordance with the Part 710 regulations.

At the hearing, seven witnesses testified. The LSO called one witness and the individual presented his own testimony and that of five witnesses. In addition to the testimonial evidence, the LSO submitted 42 exhibits into the record; the individual tendered 12 exhibits.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security

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<sup>2</sup> Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion L relates, in relevant part, to information that a person has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . .” 10 C.F.R. § 710.8 (l).

and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for the Hearing Officer’s Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites two potentially disqualifying criteria as bases for suspending the individual’s security clearance, *i.e.*, Criteria J and L.

With respect to Criterion J, the LSO relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse in 2005. Second, the individual has had four alcohol-related arrests in a 13-year period, one in 1991, one in 1992, one in 1998 and one in 2004. The information set forth above clearly raises questions about the individual’s alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

As for Criterion L, the LSO cites the following conduct as raising questions about the individual’s judgment, reliability and trustworthiness and his ability to follow rules and regulations. First, the individual failed to fulfill the terms of a court order issued in 1991 that he attend alcohol counseling. Second, on two separate occasions, once in 1998 and the other time in 2003, the LSO gave the individual strong security lectures about his past alcohol-related incidents and admonished him that any future alcohol-related incidents could negatively impact his security clearance. Despite these lectures, the individual received a DWI in 2004. The individual’s conduct, as described above, raises security concerns that he might not be reliable or trustworthy enough to properly safeguard classified information. *See id.*, Guideline E, ¶ 15.

#### IV. Findings of Fact

Between 1991 and 2004, the individual has been arrested four times for incidents involving alcohol. The individual's first alcohol-related arrest occurred in 1991 when he was 18 years old. On April 20, 1991, the individual consumed six beers over a two-hour period and then got behind the wheel of a car. Exhibit (Ex.) 15 at 2. The police initiated a traffic stop of the individual's vehicle after which they arrested the individual and charged him with DWI and "Minor in Possession." *Id.* The court ordered the individual to attend alcohol counseling and placed him on unsupervised probation for 12 months. *Id.* The individual failed to comply with the court order that he attend counseling for a specified period of time. *Id.*

The individual's second alcohol-related incident occurred in 1992 while he was on probation for his 1991 DWI. On this occasion, the police arrested the individual and charged him for being a minor in possession of alcohol.<sup>3</sup> *Id.*

In 1998, the individual was arrested a third time, this time for DWI and "Open Container." *Id.*, Ex. 28. According to the arrest report, the individual was given a Breath Alcohol Content (BAC) test which yielded test results of .12 and .11.<sup>4</sup> Ex. 28.

In 1998, the individual applied for a position with a DOE contractor that required him to obtain a DOE security clearance. When the LSO learned that the individual had been arrested three times for alcohol-related incidents, it conducted a PSI with the individual on September 16, 1998 (1998 PSI). Ex. 41. During the 1998 PSI, the Personnel Security Specialist told the individual that his involvement with alcohol "is a big concern" and admonished him to be very careful in the future with regard to alcohol. *Id.* at 57. Subsequently, the DOE granted the individual a security clearance.

In June 2001, the individual was involved in a physical altercation in a bar in which he broke another man's nose. Ex. 40. The LSO conducted a PSI with the individual in September 2001 (2001 PSI) and apparently determined that alcohol was not a factor in the incident. Two years later, in August 2003, the LSO did a follow-up PSI (2003 PSI) to discuss further the 2001 incident. During the 2003 PSI, the LSO told the individual that if he were involved in any future alcohol-related incidents, his security clearance could be suspended and he could lose his job. Ex. 39 at 69.

In 2004, the individual fell asleep while driving and his vehicle collided with a cow and a then a guardrail. The individual was knocked unconscious in the accident. After regaining consciousness, the individual wandered around dazed in a remote location for a few hours before he was able to find a house from which he called his girlfriend. The individual and his girlfriend next went to the police station to report the accident. At the police station, a police officer observed that the individual had blood-shot eyes, slurred speech and an odor of alcoholic beverages. *Id.* The police officer next asked the individual if he had

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<sup>3</sup> The charges related to the 1992 arrest were later dismissed. *Id.*

<sup>4</sup> The charges connected with the 1998 arrest were dismissed because the State failed to prosecute the matter within six months of the individual's arrest. Transcript of Hearing at 41.

consumed alcoholic beverages. The individual responded that he had had two beers before the accident and two shots of whiskey immediately after the accident. *Id.* At this point, the police officer placed the individual under arrest. Seven hours after the accident occurred, the police administered a BAC test to the individual. When the result of the BAC revealed an alcohol level of .14, the police charged the individual with DWI.<sup>5</sup>

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>6</sup> After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### A. Criterion J

The individual disagrees with the DOE consultant-psychiatrist's diagnosis of alcohol abuse in this case and disputes that he currently has, or ever had, a problem with alcohol. Tr. at 60, 70. He does, however, recognize that alcohol has caused problems in his life. *Id.* at 60.

The overwhelming weight of evidence in the case supports a finding that the individual suffers from alcohol abuse. The DOE consultant-psychiatrist clearly articulated in his Psychiatric Report and testified convincingly at the hearing why he exercised his clinical judgment in finding that the individual suffers from alcohol abuse. Ex. 15, Tr. at 171-179.<sup>7</sup> The pivotal question then is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his alcohol abuse.

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<sup>5</sup> The charges associated with the 2004 arrest were dismissed because the District Attorney failed to subpoena the State police. *Id.* at 48.

<sup>6</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

<sup>7</sup> In his closing statement, Counsel for the individual argues that the DOE consultant-psychiatrist's opinion should be disregarded because the individual does not meet the criteria for alcohol abuse as set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition, Text Revised (DSM-IV-TR). I reject Counsel's argument for the following reasons. First, the introductory section of the DSM-IV-TR clearly states that a person with appropriate training and experience, such as the DOE consultant-psychiatrist, can exercise his clinical judgment to provide a diagnosis for a person even though the clinical presentation falls short of meeting the full criteria for the diagnosis. Second, the individual did not present testimony from a psychologist or psychiatrist that challenged the underpinnings of the psychiatric diagnosis in this case. Third, the lay opinions of the individual's stepfather, his girlfriend, and his friends do not individually or

## Rehabilitation or Reformation

The individual testified that he stopped consuming alcohol in October 2005 because he “wants to get his job back.” Tr. at 54-55, 59. He also voluntarily enrolled in an intensive outpatient alcohol treatment program on October 21, 2005. Tr. at 65, Ex. K. To corroborate his participation in the alcohol treatment program, the individual submitted a letter from the Treatment Program confirming his enrollment and a copy of the “Contract for Intensive Outpatient Counseling.” See Exhibits D and K. According to Exhibit K, the individual has participated in 93 hours of group counseling sessions as of the date of the hearing. Ex. K. The individual’s goal is to participate in 122 hours of group counseling as of October 21, 2006. *Id.* The individual testified that he has not yet found a sponsor in his program because “he hasn’t had any cravings.” Tr. at 77. He also testified that he disagreed with the treatment program’s assessment that he has a “considerable problem” with alcohol. *Id.* at 70.

The individual’s girlfriend with whom he has lived for four years confirmed that the individual stopped consuming alcohol in October 2005. *Id.* at 21. She opined that the individual did not drink “a lot” before entering treatment, that she never saw him intoxicated even on the night of the 2004 DWI, and that she does not believe that he has a problem with alcohol despite his four alcohol-related arrests. *Id.* at 16, 17, 24, 26. The girlfriend testified that she believes that the individual is committed to maintaining his sobriety and that he is going to treatment “for himself, not because he’s required to go.” *Id.* at 22-23. The girlfriend supports the individual’s pledge of sobriety and has even attended one family night at the outpatient treatment center. *Id.* at 23, 33. The girlfriend concluded her testimony by stating that she would not be concerned if the individual were to resume drinking again because she does not believe that he has a problem with alcohol. *Id.* at 29.

The individual’s stepfather and a friend also expressed their views that the individual does not have a problem with alcohol. *Id.* at 119, 126. They, along with another of the individual’s friends, testified that they have not seen the individual consume alcohol since October 2005. *Id.* at 119, 124, 134.

A licensed treatment counselor from the individual’s outpatient treatment center also testified at the hearing. The counselor explained that the individual participated in his group counseling sessions. *Id.* at 91. The counselor related that the group counseling sessions cover topics such as alcohol and drug behavior, the attitude of an alcoholic, life skills, co-dependency, anger management, spirituality, and the “12 steps.” *Id.* at 95. The counselor stated that the individual’s participation in the program was “good” and that he appeared motivated to continue in his recovery. *Id.* at 96. The counselor thought that the individual had admitted that he had a problem with alcohol. *Id.* at 105. Upon hearing that the individual did not believe that he has a problem with alcohol, the counselor stated that persons who are in denial of their disease often say “alcohol has caused me a problem, I

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cumulatively outweigh the expert opinion of a psychiatrist who is board-certified in substance abuse disorders.

don't have a problem with alcohol." *Id.* at 108. The counselor then testified that the first step in recovery is admitting that you have a problem and accepting that problem. *Id.* He added that it is positive that the individual entered treatment voluntarily. *Id.* at 111. The counselor concluded by testifying that a sponsor is very important and that he recommends to all those who participate in his group counseling sessions that they obtain a sponsor. *Id.* at 110.

The DOE consultant-psychiatrist who is board-certified in psychiatry and substance abuse disorders listened to the testimony of the individual and all the other witnesses before he testified at the hearing. First, he opined that the individual has made a fairly good start at his recovery by entering the intensive outpatient rehabilitation program. *Id.* at 180. The DOE consultant-psychiatrist is concerned however that the individual has not accepted that he has a problem with alcohol. He explained that one cannot be rehabilitated from a problem if one doesn't think he has a problem. *Id.* at 180,-181. He also opined that the individual's prognosis is "not good" because the individual believes that he can control his drinking if he were to resume consuming alcohol in the future. *Id.* at 181. The DOE consultant-psychiatrist concluded that the individual needs one year of treatment and sobriety before the individual can be considered adequately rehabilitated from his alcohol abuse.

### **Evaluation of Evidence**

Based on the record before me, I find that the individual's five months of sobriety and treatment as of the date of the hearing are not sufficient for me to find that he is rehabilitated or reformed from his alcohol abuse. As an initial matter, the individual does not acknowledge that he has any problem with alcohol. As the DOE consultant-psychiatrist pointed out, the individual's denial is a major impediment to any rehabilitation or reformation in this case. While it is positive that the individual voluntarily enrolled in an intensive outpatient alcohol treatment program, I question how much the individual has internalized from the treatment that he has received. Despite his counselor's recommendation, the individual has not asked anyone to act as his sponsor. Moreover, that individual has attended 93 hours of group counseling, yet still is in denial that he has a problem with alcohol. As for his network of support, it is a matter of concern that the individual's girlfriend, his stepfather and his friends do not believe that the individual has a problem with alcohol even though the individual has been arrested for DWI three times. In addition, the individual's girlfriend testified that she would not be concerned if the individual were to resume drinking alcohol again. This is not the kind of attitude that I would expect from someone who was committed to assisting a person to maintain his sobriety in the future.

In the end, after carefully weighing all the factors described above, I find that not enough time has elapsed for me to find that the individual will be successful in his efforts to recover from his alcohol abuse. For this reason, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criterion J in this case.

## **B. Criterion L**

The LSO questions the individual's honesty, trustworthiness and reliability as the result of (1) the individual's failure to comply with a court order in 1991 with regard to alcohol counseling, and (2) the individual's failure to heed the LSO's admonishments in 1998 and 2001 with regard to future alcohol-related incidents.

Regarding the individual's failure to satisfy his sentence for the 1991 DWI, the individual testified that he stopped going to the counseling sessions after only one session because he was arrested shortly thereafter and charged with "Minor in Possession." Tr. at 39. He told the DOE consultant-psychiatrist, however, that he ignored the court requirement after attending only one counseling session because he did not believe that he needed the counseling. Ex.15 at 2.

In evaluating the individual's conduct in 1991, I considered that the individual was 18 years old when he violated the court order. His seeming lack of maturity at the time is a factor that could augur in his favor. In addition, the incident occurred 15 years ago and there is no evidence that the individual has disregarded any court orders, rules, or regulations since that time. Weighed against these potentially positive factors are the following negative ones. The individual told the DOE consultant-psychiatrist that he failed to comply with the court order because he did not believe that he needed alcohol counseling. The individual's failure to understand then, or now, the gravity of his alcohol problem is a matter of concern. Moreover, the individual never expressed remorse or regret for his deliberate violation of the court order. Furthermore, the individual did not address at the hearing how he has matured over the last 15 years or why he would not make the same choice if confronted with a court order in the future. In the end, I find that the individual has not convinced me that his conduct in 1991 will not occur again in the future.

As for the individual's failure to heed the LSO's warnings about future alcohol-related incidents, the individual testified that he recalls neither meeting with the Personnel Security Specialist in 1998 nor her warnings that future alcohol-related problems could result in problems with his security clearance. Tr. at 221. Similarly, he testified that he did not recall either the 2003 PSI or the Personnel Security Specialist telling him that there could be ramifications for his security clearance if he was involved in other alcohol-related incidents. *Id.* at 223-224. The individual's inability to recall the warnings provided by the LSO does not excuse his conduct. It appears that the individual's failure to grapple with his alcohol abuse may have contributed to his failure to heed the warnings and to his decision to drink irresponsibly after the 1998 and 2003 warnings. In the end, the individual has provided very little evidence to mitigate his behavior in this regard.

In summary, after careful consideration of all the testimonial and documentary evidence, I find that the individual has not mitigated the security concerns associated with Criterion L.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria J and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with either criteria. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: September 7, 2006